

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
Charlottesville Division**

ELIZABETH SINES, SETH WISPELWEY,  
MARISSA BLAIR, APRIL MUÑIZ,  
MARCUS MARTIN, NATALIE ROMERO,  
CHELSEA ALVARADO, JOHN DOE, and  
THOMAS BAKER,

Plaintiffs,

v.

JASON KESSLER, et al.,

Defendants.

**Civil Action No. 3:17-cv-00072-NKM**

**JURY TRIAL DEMANDED**

**PLAINTIFFS' SUBMISSION AND PROPOSED ORDER REGARDING  
PROTOCOLS FOR PUBLIC AND PRESS ACCESS**

Pursuant to this Court's instructions during the October 8, 2021, teleconference, Plaintiffs hereby file this proposed order regarding the parties' request to revise the Court's protocols governing access to the courthouse during the jury trial in this matter. *See* COVID-19 Health Precautions Order, ECF No. 1146 (Oct. 4, 2021). As they noted on the record in the teleconference with the Court, Defendants agree that the protocol should be revised.

The health reasons for restricting access to the courthouse during the COVID-19 pandemic need not be stressed. *See* ECF 1146 ("The COVID-19 pandemic has caused and continues to cause great risk to the health and safety to those in the Western District of Virginia."). Similarly, this Court is well aware of the sensitivities of this case and the safety concerns that the trial proceedings present. Accordingly, alternative means of ensuring public access to the proceedings are warranted.

A. As Plaintiffs already brought to this Court's attention, federal courts in very high profile trials in recent months have not hesitated to restrict *physical* access to the Courthouse to

protect the health and safety of the parties, their counsel, and the court staff. Plaintiffs’ counsel Ms. Dunn and Ms. Phillips litigated one such case and, accordingly, raise the trial procedures adopted in that case as an example for the Court to consider.

In *Epic Games, Inc. v. Apple Inc.*, No. 4:20-cv-05640, the Northern District of California permitted public access “by way of telephone access” only, since “video access is not an option for evidentiary proceedings including trials.” ECF 371, at 1 (Mar. 2, 2021). To accomplish public access, that court set up a high-volume telephone line—something that this Court already intends to do, *see* ECF No. 1146—and ensured press access through a separate, press-dedicated telephone line, *see* ECF 468, at 2 (N.D. Cal. Apr. 21, 2021) (ordering “a specific telephone line for media specifically . . . to ensure that they have access to the audio,” and “one or more high volume telephone lines for the public at large”). In response to the overwhelming media interest that was expressed to the court ahead of the *Epic* trial, *see* ECF 457 (N.D. Cal. Apr. 16, 2021) (“Administrative Motion for Trial Access filed by Reporters Committee for Freedom of the Press and 18 Media Organizations”), the court also authorized two “pool” reporters to attend each day of trial, to supplement the live, audio broadcasts of the proceedings available to all reporters and to the public, *see* ECF 485 (N.D. Cal. Apr. 26, 2021).<sup>1</sup>

B. Plaintiffs also respectfully request that this Court consider adopting two additional safety precautions and protocols, even though these further measures were not expressly brought to the Court’s attention during the October 8 teleconference. *First*, in addition to mandating that every person wear a mask while in the Courthouse, we understand that other courts have provided transparent microphone covers, to be replaced by each speaker as they approach to speak at one of the Courtroom’s microphones. Plaintiffs are ready to procure such transparent covers, so that, at

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<sup>1</sup> Plaintiffs would not oppose similar accommodations for “pool” reporters in this case, if requested.

the Court's discretion, witnesses and counsel may ensure that the Courtroom's microphones remain clean throughout the proceedings. *Second*, in the *Epic* trial, "the parties and their attorneys [were] allowed to access the audio of the trial through [a] Zoom link," so that they could listen to the proceedings offsite, including "any sealed proceedings," without "encumber[ing] one of the telephone lines." ECF 468, at 3 (N.D. Cal. Apr. 21, 2021). Plaintiffs believe that making a Zoom link available to the parties and their counsel would similarly ensure that none of the press or public telephone lines are unnecessarily burdened and enable this sizable group of people to follow the proceedings from offsite locations.

### CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court enter their [Proposed] Supplemental Order Regarding Access to the Courthouse.

Date: October 12, 2021

Respectfully submitted,

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I hereby certify that on October 12, 2021, I served the following via electronic mail:

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